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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/308,515	08/11/1999	ROBERT PAUL BLACK	THOM-0007	6283
7590 12/03/2003				
JOHN W CALDWELL WOODCOCK WASHBURN KURTZ MACKIEWICZ & NORRIS ONE LIBERTY PLACE 46TH FLOOR PHILADELPHIA, PA 19103				
EXAMINER GUARRIELLO, JOHN J				
ART UNIT		PAPER NUMBER		
1771				

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/308,515

Applicant(s)

BLACK, ROBERT PAUL

Examiner

John J. Guarriello

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

15. The Examiner acknowledges the the amendment of 7/24/2003.
16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

17. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

18. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Borge 3,616,150.

Borge describes an insulation material fabric with an inner layer and an outer layer which can be a non-woven made of blends of natural and synthetic fibers, (column 2, lines 3-5). Borge describes the fibers can be cellulosic and polyester as a blend, (column 2, lines 6-39). Borges describes the essential

limitations of the claimed invention. Borge describe the laminated fabrics can be used in coats and other garments which would correspond to padding or stuffing or filling. Claim lacks novelty.

Claim Rejections - 35 USC § 103

19. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder 5,344,707 in view of Borge 3,616,150.

Rejection is maintained. Applicant's arguments have been noted regarding use of the term blend. However, terms are given their broadest reasonable interpretation and blend can mean a mixture of at least two components which the prior art of record encompasses.

Snyder describes fillings as fiberballs used for pillows, cushions and similar support utilities from blends, (see abstract; column 6, lines 53-66). Snyder describes how the fiberballs can be made of blends of polyester, (column 1, lines 30-50; column 2, lines 9-23). Snyder

differs from the claimed invention because it is silent about other fibers in the blend but suggests (column 6, lines 60-68) it is possible to make fiberballs (corresponding to filling) from various blends of fibers.

Borge describes laminated articles of an outer layer of textile fabric and an innerlayer of textile fabric, (see abstract). Borge describes using blends of natural (corresponding to cellulose or cellulosic materials of the claimed invention) and synthetic materials (corresponding to polyester of the claimed invention) and combinations thereof for improving thermal properties (corresponding to insulation properties of the claimed invention), (column 2, lines 2-35; lines 37-42).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the blends of Borge for the blend of Snyder motivated with the expectation that since the amount of the blends can be optimized as noted by Snyder above and the materials of the blends can be optimized as noted by Borge above the properties of bedding would be obvious since there is no defined structure for the fabric. It is the Examiner's position that the

patentability of the product does not depend upon its method (spinning) of production. If the product in the product-by-process claim is the same or is obvious from a product of the prior art, the claim is unpatentable even though the product was made by a different process, *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. The claimed invention is still obvious.

20. Applicant's arguments regarding the rejection of record were considered but in view of the new grounds of rejection they are not applicable under 102 for claim 1.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

Application/Control Number: 09/308,515
Art Unit: 1771

Page 6

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

November 25, 2003



ELIZABETH M. COLE
PATENT EXAMINER